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No. 40

In the Supreme Court of the United States

OCTOBER TERM, 1930

FAWCUS MACHINE COMPANY, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The memorandum opinion of the Court of Claims (R. 28) has not been officially reported. The decision is noted in 68 C. Cls. 784.

JURISDICTION

The judgment of the Court of Claims was entered on November 4, 1929. (R. 28.) The petition for certiorari was filed February 4, 1930. (R. 28.) Certiorari was granted April 21, 1930 (R. 29), 281 U. S. 711. The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925.

27106—30——1

QUESTION PRESENTED

In computing the invested capital for the year 1919 of a corporation whose books of account are kept on the accrual basis, should its invested capital as at the close of the year 1918 be reduced by the amount of income and profits taxes imposed for the year 1918 by the Revenue Act of 1918, which was enacted on February 24, 1919?

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved will be found in the Appendix, *infra*, pp. 19–20.

STATEMENT

Petitioner is a Pennsylvania corporation and was engaged in business during the years 1918 and 1919. (R. 24, 25.) It kept its books of account and filed its income and profits tax returns on the accrual basis. (R. 26.) In its income and profits tax return for the year ended December 31, 1919, petitioner made no reduction in its invested capital for that year on account of income and profits taxes assessed and paid in 1919 for the year 1918. (R. 25.) During the year 1919, at the time each installment of the 1918 taxes became payable, petitioner had on hand profits earned during 1919 more than sufficient to pay such installment.

The Commissioner of Internal Revenue, in auditing the petitioner's 1919 return, determined that its invested capital for the year 1919 should be re-

duced by the amount of taxes on income and profits earned in the year 1918, as of the dates in 1919 when the respective installments of taxes became due and were paid. (R. 26.) This was accomplished by determining the average deduction for the year 1919 and reducing the earned surplus as of January 1, 1919, by that amount. (R. 26.)

The petitioner claims a refund of $1,597.85 alleged to have been overpaid for the year ended December 31, 1919, and contends that the Commissioner of Internal Revenue was in error in reducing its invested capital for the year 1919 on account of income and profits taxes for the preceding year.

SUMMARY OF ARGUMENT

Article 845 of Treasury Regulations 45, under which petitioner's invested capital for the year 1919 was computed, is a departmental ruling upon a question raised by, but not specifically adverted to in the Revenue Act of 1918, and as such should not be held invalid unless clearly unreasonable. Article 845 has received the implied approval of Congress in the enactment of the Revenue Act of 1921. Although not binding upon this Court, such implied approval is entitled to great consideration.

The exclusion from invested capital for the year 1919 of income and profits taxes for the year 1918 is reasonable and in accordance with good accounting practice, where, as here, the taxpayer's books are kept on the accrual basis. The Revenue Act of 1918 was in effect an amendment to the Revenue

Act of October 3, 1917. Consequently, at the close of the year 1918 the taxpayer was under an accrued liability for income and profits taxes for that year computed under the Act of 1917; this accrued liability should have been adjusted to conform to the rates prescribed by the Act of 1918, in order that income might be correctly reflected. Since the petitioner's return for 1919 was not filed until March, 1920, there was ample opportunity for making such adjustment.

Section 1207 of the Revenue Act of 1926 has been interpreted by the Board of Tax Appeals to be an express ratification of Article 845 and the computations of invested capital made by the Commissioner pursuant thereto. Although we do not support this construction, we submit that the section is not unconstitutional if so construed.

ARGUMENT

I

ARTICLE 845 OF REGULATIONS 45 SHOULD NOT BE HELD INVALID UNLESS CLEARLY UNREASONABLE

The concept of "invested capital" as an element in the computation of the excess profits tax was purely a legislative one. There can be no doubt that Congress might have made express provision for the exclusion of taxes from invested capital. But detailed provisions as to each item which should be or should not be included in invested cap-

ital would have made the statute unnecessarily long and complex. Instead, Congress established a definition of invested capital in general terms. Section 326 (a) of the Revenue Act of 1918 (*infra*, p. 19), provided:

> That as used in this title the term "invested capital" for any year means * * *;
>
> (1) Actual cash bona fide paid in for stock or shares;
>
> (2) Actual cash value of tangible property, other than cash, bona fide paid in for stock or shares, * * *;
>
> (3) Paid-in or earned surplus and undivided profits; not including surplus and undivided profits earned during the year;

Because of the broadness and generality of this definition, especially as to the meaning of "paid-in or earned surplus and undivided profits," the Commissioner of Internal Revenue was obliged to formulate regulations as to the details of its administration. Treasury Regulations 45 were promulgated on April 17, 1919, to govern the administration of the Revenue Act of 1918. Article 845 of those Regulations [1] (*infra*, pp. 19–20) provided that in computing invested capital—

> federal income * * * taxes are deemed to have been paid out of the net income of the taxable year for which they are levied.

---

[1] This article was patterned upon and substantially identical with Treasury Decision 2791, promulgated February 17, 1919, under Title II of the Revenue Act of October 3, 1917.

It was further provided that amounts payable on account of such taxes might be included in invested capital until the taxes become due and payable. The computation of invested capital in the present case was made in accordance with this Article.

Power to make regulations for the enforcement of the Act was expressly conferred by Section 1309 of the Act. (*Infra*, p. 19.) The Commissioner thus had "power to fill up the details" as to the administration of the statute in matters not expressly provided for in the statute, and his regulations are valid if reasonable and not inconsistent with the law. Cf. *United States* v. *Grimaud*, 220 U. S. 506, 517; *Maryland Casualty Co.* v. *United States*, 251 U. S. 342, 349; *International Railway Co.* v. *Davidson*, 257 U. S. 506, 514.

When the terms of a statute are doubtful or ambiguous, the contemporaneous construction of those charged with their administration is entitled to great respect. This principle of interpretation has been too firmly established by the decisions of this Court to require extended discussion. *Edwards* v. *Darby*, 12 Wheat. 206; *United States* v. *Moore*, 95 U. S. 760; *National Lead Company* v. *United States*, 252 U. S. 140; *Brewster* v. *Gage*, 280 U. S. 327. It is not altered by the fact that there may be other and equally reasonable interpretations. Cf. *Brown* v. *United States*, 113 U. S. 568, 570.

Section 326 (a) (3) of the Revenue Act of 1918 is sufficiently ambiguous to justify the invocation

of this rule for purposes of guidance. The question of the inclusion or exclusion of taxes for the preceding year in the computation of earned surplus is not adverted to, either directly or indirectly, in the statute. The practice of the Commissioner has been uniform, as is shown by Treasury Decision 2791, Article 845 of Regulations 45, and Article 845 of Regulations 62 covering the corresponding section of the Revenue Act of 1921. This departmental interpretation of the statute must stand unless unwarranted and unreasonable.

Greater force is lent to the rule in the instant case by reason of the fact that the very provisions of the Revenue Act of 1918 to which Article 845 was directed were reenacted by Congress in Section 326 of the Revenue Act of 1921. (Although the precise situation here involved could not arise under that Act, as it was passed before the end of the first calendar year to which it applied, there might arise under it the analogous question of its application to a fiscal year ending sometime during 1921, before its passage on November 23, 1921.) We submit that this reenactment in 1921 is indicative of Congressional approval of the regulation as applied to taxes levied under the 1918 Act. This Court has repeatedly recognized the value of subsequent legislation as an aid to the interpretation of ambiguous or doubtful provisions of an earlier statute under consideration.

In the case of *Bailey* v. *Clark,* 21 Wall. 284, which involved the construction of the word "capi-

tal" as used in the Revenue Act of 1866, the Court referred to the Act of 1872, in which the word was expressly defined, and said (p. 288):

> This enactment was evidently intended to remove any doubt previously existing as to the meaning of the statute and declare its true construction and meaning. Had it been intended to apply only to cases subsequently arising it would undoubtedly have so provided in terms.

It is true that the Act of 1921 does not attempt to define "invested capital" more precisely than does the Act of 1918. But at the time of the enactment of the later Act, Article 845 of Regulations 45 was in force and had been enforced for two years. Consequently, Congress must be presumed to have legislated in the light of that Article and to have sanctioned the departmental construction of the earlier Act. Cf. *Copper Queen Mining Co.* v. *Arizona Board*, 206 U. S. 474, 479.

Where the meaning of the reenactment is in question it is held that the executive construction is to be read into and made a part of the statute with the same force and effect as if specifically incorporated therein. *National Lead Company* v. *United States, supra; Brewster* v. *Gage, supra.* In the instant case we contend merely that the reenactment is persuasive evidence of the intent of Congress in the earlier Act. It was so held, as to another regulation under the 1918 Act, in *Schweizer*

v. *Mager*, 297 Fed. 334 (N. D. Ill.). See also *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1, 21.

We consequently submit that the regulation should not be held invalid unless it is clearly unreasonable.

II

ARTICLE 845 OF REGULATIONS 45 IS REASONABLE, IN ACCORDANCE WITH GOOD ACCOUNTING PRACTICE, AND NOT IN CONFLICT WITH THE STATUTE OR THE DECISIONS OF THE COURTS

The taxpayer in the case at bar kept its books, during all the years pertinent to this action, on the accrual basis (R. 26—Finding VII), and its excess-profits tax return for the year 1919 was prepared on the same basis, as required by the provisions of the statute. In computing the tax for 1919 the Commissioner allowed taxes for 1918 to be included in invested capital only until such time as they were actually paid. We maintain that the Commissioner could validly have required that in the computation of invested capital for 1919 the entire amount of all taxes on 1918 income be deducted. If so, the regulation in question, which required the deduction of only part of the amount of those taxes, can not be objected to by the taxpayer.

The Revenue Acts require that the tax return shall be made on a basis which clearly reflects income. (Cf. Revenue Act of 1918, Section 212 (b).) Income can not be correctly reflected unless all costs

of obtaining that income are deducted therefrom. The principle is stated in Scott, *Theory of Accounts,* Vol. I, p. 50, as follows:

> In order that the statement showing a balance of net income or net loss may be truly representative it is necessary for the incomes and expenses shown to refer to the same operations.

When the accrual method of accounting is followed, all major items must be treated with reference to the accrual dates. If income is entered on the books as soon as it has accrued, and the expenses incident to the earning of such income are not entered until due and payable, or until actually paid, the net income for the accounting period is not accurately reflected. We again quote from Scott, *Theory of Accounts,* p. 52:

> A second rule may be stated without further argument. It is that from the total incomes of any period there should be deducted all expenses which are costs of obtaining those incomes. Any item which is a cost of obtaining income of the period is a current cost or operating expense.

See to the same effect *United States* v. *Anderson,* 269 U. S. 422, 440.

In one sense it is arguable that a tax is not an operating expense, since it is not an item of cost which is voluntarily incurred and can be allocated to specific production items. On the other hand, if a tax is to be allocated to any one accounting period rather than to another, it should be allocated to the

period in which was earned the income on which it was imposed, where accounts are kept on the accrual basis. A tax on income is recognized as an expense of production by practising accountants. See Montgomery and Staub, *Auditing Principles* (1923), p. 308:

> The deductions from gross income should include all income taxes. A corporation can not claim to have accumulated any net income in any year until provision is made for taxes accrued or payable to the United States, based on net income for the same year. * * * This principle holds good whether or not the taxes or other charges have been paid.

The principle that a tax must be considered to accrue at the termination of the period for which it is imposed was expressly recognized by this Court in the case of *United States* v. *Anderson,* 269 U. S. 422. This decision was followed in the cases of *Nichols* v. *Sylvester Co.,* 16 F. (2d) 98 (C. C. A. 1st), certiorari denied, 273 U. S. 760; *Bowers* v. *Kaufmann & Co.,* 18 F. (2d) 69 (C. C. A. 2d); and *W. S. Bogle & Co.* v. *Commissioner,* 26 F. (2d) 771 (C. C. A. 7th).[2]

Petitioner attempts to distinguish the *Anderson* (or *Towne*) *case* on the ground that excess-profits taxes for the year 1918 can not be deemed to have accrued in that year because the Revenue Act of

[2] In *United States* v. *Norwich & W. R. Co.,* 16 F. (2d) 944, the District Court for Massachusetts adopted substantially the view which the petitioner now presents.

1918 was not enacted until February 24, 1919. The Act of 1918 is in terms retroactive and applicable to the year 1918. Section 301 (a) provides for the collection of an excess-profits tax for the year 1918 "in lieu of the tax imposed by Title II of the Revenue Act of 1917." The effect of the 1918 Act is in this respect to amend the Act of 1917; the basis of the tax is substantially identical in both statutes, the only difference being in the rates.

At the end of the calendar year 1918 the Act of 1917 was in effect. It follows from the foregoing discussion of the accrual method of accounting, and from the decision of this Court in the *Anderson case* that on December 31, 1918, petitioner was subject to an accrued liability under the 1917 Act for excess-profits taxes for 1918. Such accrued liability would have been a proper deduction from invested capital as of January 1, 1919, had the Act of 1918 not been adopted prior to the filing of the tax return.

The 1917 Act having been amended by retroactive legislation, the tax under the Act as amended may properly be treated as accruing in place of the tax previously provided for. A Revenue Act may be, and frequently has been, amended by retroactive legislation after the year for which the tax is levied. In fact, entirely new tax legislation has frequently been made retroactive. (Cf. cases cited in dissenting opinion in *Untermyer* v. *Anderson,* 276 U. S. 440, 446–454.) Regardless of whether it is technically correct to regard the tax in question

as accruing in 1918, the situation is one in which the Commissioner could reasonably regard the 1918 tax as having the same effect on 1919 invested capital as the 1919 tax did on 1920 invested capital.

From a practical standpoint there is no objection to the method established by the Commissioner. The Revenue Act of 1918 was enacted on February 24, 1919. Regulations 45 were promulgated on April 17, 1919. Petitioner's tax return was not filed until approximately March 15, 1920. Amended returns were filed in June, 1921, and in January, 1922. (R. 25—Finding II.) At the close of the year 1918 petitioner knew that it would be required to pay income and excess-profits taxes for that year under the Act of 1917. The fact that the amount of the tax as finally established was different from that originally contemplated should not control the case.

Since the Act of 1918 was retroactive by its express terms, there can be no objection to construing it as being retroactive in this respect, especially since the result of such construction is to require taxes to be treated, for purposes of accounting, in accordance with established accounting principles.

The petitioner quotes from the report of the Senate Finance Committee on the 1918 Revenue Act in an attempt to show that Congress did not contemplate the deduction of income and excess-profits taxes in the computation of invested capital. (Brief, p. 16.) The paragraph quoted relates to determination of net income and has no bearing on

the question here presented. If the Committee was of the opinion that taxes would be deducted in the year in which payable, regardless of whether the taxpayer's books were kept on the cash or the accrual basis, its opinion carries no weight as against this Court's decision in the *Anderson case.* Moreover, nondeductibility for income-tax purposes has no bearing on the question of deduction for excess-profits tax purposes. As this Court said in *Willcuts* v. *Milton Dairy Co.,* 275 U. S. 215, 220:

> The deductions from gross income allowed by that Title [Title II] do not refer to invested capital, surplus, or undivided profits, and its provisions throw no light upon the meaning of those terms as used in Title III providing for an excess-profits tax.

The facts in the instant case are substantially identical with those involved in the case of *Nichols* v. *Sylvester Co.,* 16 F. (2d) 98, *supra.* There the plaintiff contended that the tax due under the retroactive provisions of the Revenue Act of October 3, 1917, for the fiscal year ended June 30, 1917, should be included as part of its invested capital for the fiscal year 1917–1918 until paid on June 14, 1918. The Commissioner had deducted the tax as of December 15, 1917, the date when it became payable under the administrative provisions of the Act. The court sustained the Commissioner's action and expressed the opinion that the tax accrued June 30, 1917 (although the Act had

not then been adopted), and that no part of it should have been included in invested capital for the following fiscal year.

Schuster & Co., Inc., v. *Williams, Collector*, 283 F. 115 (C. C. A. 7th), relied upon by petitioner, seems distinguishable on two grounds. That case involved the Wisconsin Soldiers' Bonus Act, which was passed in 1919 and imposed a tax on the basis of 1918 incomes. The Circuit Court of Appeals held that the tax did not accrue until 1919 (citing *United States* v. *Woodward*, 256 U. S. 632, a decision which was restricted in its application, as this Court pointed out in the *Anderson case*, 269 U. S. 422, 441, *supra*) and that it was not deductible in computing the Federal income tax for 1918. But the Bonus Act was a wholly independent measure, having no counterpart in either earlier or subsequent tax legislation and was not simply an amendment of an existing law, as was the Revenue Act of 1918. Consequently, the taxpayer was under no liability whatsoever in this respect at the close of the year 1918. Furthermore, the Bonus Act did not become law until it had been ratified by popular vote, which did not take place until some months after the Federal income-tax return had been filed.

The *Woodward case, supra*, on which petitioner also relies, is not in point for the reason that, as this Court observed in the *Anderson case*, that case involved an estate tax, and it did not

appear whether the taxpayer kept his books on the accrual basis.

III

SECTION 1207 OF THE REVENUE ACT OF 1926 HAS BEEN INTERPRETED TO CONSTITUTE EXPRESS RATIFICATION OF THE RULING OF THE COMMISSIONER. AS SO INTERPRETED THIS SECTION IS CONSTITUTIONAL

In Section 1207 of the Revenue Act of 1926 (*infra*, p. 20), Congress expressly ratified the computations of invested capital made by the Commissioner, in so far as they involved the *inclusion* in invested capital for one year of income and profits taxes for the preceding year, "if made in accordance with the regulations in force in respect of such taxable year" applicable to the relationship between those items. Petitioner urges that this section was designed only to relieve the Commissioner of the necessity, under the decision in *United States* v. *Anderson*, *supra*, of collecting additional taxes on the ground that Article 845 was too lenient in permitting the retention of any part of income and profits taxes for the prior year in invested capital for the taxable year. Although we agree with this contention, we point out that it has not been so interpreted.

Prior to the passage of the Act of 1926 and the decision in the *Anderson case*, *supra*, the Board of Tax Appeals, in *Appeal of Guarantee Construction Co.*, 2 B. T. A. 1145, had held Article 845 invalid. This decision was expressly overruled in *Appeal of*

Russell Wheel & Foundry Co., 3 B. T. A. 1168, because of Section 1207.

Since deciding the *Russell Wheel Company case*, the Board of Tax Appeals has rendered more than twenty decisions sustaining the action of the Commissioner in reducing invested capital in accordance with the requirements of Article 845. In each case the Board expressly relied on Section 1207, the *Russell Wheel Company case*, or both. At least ten of these cases involve the same tax years as the instant case.[3] To the same effect is *W. S. Bogle & Co.* v. *Commissioner*, *supra*, in which the court cited both Section 1207 and the *Anderson case*. See also the report of the Conference Committee, p. 21, *infra*.

Although we do not agree with this construction of Section 1207, nevertheless we submit the question for the consideration of the Court, if it be deemed essential to the decision of this case.

To construe Section 1207 as a ratification of the whole of Article 845 and the computations made pursuant thereto does not, we submit, render it unconstitutional. Congress would have had ample power to make specific provision in the Act of 1918 for the calculation of the tax on the basis used by the Commissioner herein, and had power to ratify the Commissioner's interpretation and his acts performed thereunder. *United States* v. *Heinszen &*

[3] See for example *Hutchins Lumber Co.* v. *Commissioner*, 4 B. T. A. 705.

Company, 206 U. S. 370; *Rafferty* v. *Smith, Bell & Company*, 257 U. S. 226; *Charlotte Harbor Railway* v. *Welles*, 260 U. S. 8.

Koshkonong v. *Burton*, 104 U. S. 668, cited by petitioner as a leading case, is not in point. There the later enactment purported to affect vested contract rights, and was accordingly held unconstitutional.

CONCLUSION

The judgment of the Court of Claims should be affirmed.

Respectfully submitted.

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DECEMBER, 1930.

APPENDIX

The pertinent provisions of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1092, 1143, are as follows:

Section 326. (a) That as used in this title the term "invested capital" for any year means (except as provided in subdivisions (b) and (c) of this section):

(1) Actual cash bona fide paid in for stock or shares;

(2) Actual cash value of tangible property, other than cash, bona fide paid in for stock or shares, * * *;

(3) Paid-in or earned surplus and undivided profits; not including surplus and undivided profits earned during the year;

* * * * *.

(b) As used in this title the term "invested capital" does not include borrowed capital.

* * * * *

(d) The invested capital for any period shall be the average invested capital for such period * * *.

SEC. 1309. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

* * * * *

Article 845 of Regulations 45, issued under the Revenue Act of 1918, provides as follows:

Surplus and Undivided Profits: Reserve for Income and Excess Profits Taxes.—For

the purpose of computing invested capital federal income and war profits and excess profits taxes are deemed to have been paid out of the net income of the taxable year for which they are levied. It is immaterial, therefore, whether reserves for the payment of such taxes for the preceding year have been set up or not, or if set up whether such taxes when paid have actually been charged against such reserves. Amounts payable on account of such taxes for the preceding year may be included in the computation of invested capital only until such taxes become due and payable. A deduction from the invested capital as of the beginning of the taxable year must therefore be made for such taxes or any installment thereof, averaged for the proportionate part of the taxable year after the date when the tax or the installment is due and payable. Where as a result of an audit by the Commissioner, or the acceptance of an amended return, or for any other reason, the amount of any such tax for the preceding year is subsequently changed, a corresponding adjustment will be made in the invested capital for the taxable year upon the same basis as if the corrected amount of the tax for the preceding year had been used in the original computation of the invested capital for the taxable year. See articles 1541 and 1542.

Section 1207 of the Revenue Act of 1926, c. 27, 44 Stat. 9, 129, reads as follows:

> The computation of invested capital for any taxable year under the Revenue Act of 1917, the Revenue Act of 1918, and the Revenue Act of 1921, shall be considered as having been correctly made, so far as relating to the inclusion in invested capital for such

> year of income, war-profits, or excess-profits taxes for the preceding year, if made in accordance with the regulations in force in respect of such taxable year applicable to the relationship between invested capital of one year and taxes for the preceding year.

In the report of the Conference Committee (House Report No. 356, 69th Congress, 1st Session, p. 59) the following statement was made with reference to this section:

> This amendment validates the regulations of the Internal Revenue Bureau applicable to the revenue acts of 1917, 1918, and 1921 in so far as such regulations apply to the relationship between invested capital of one year and taxes for the preceding year; * * *.

U. S. GOVERNMENT PRINTING OFFICE: 1930

SUPREME COURT OF THE UNITED STATES.

No. 40.—October Term, 1930.

Faweus Machine Company, Petitioner,
vs.
The United States.
} On Writ of Certiorari to the Court of Claims.

[January 5, 1931.]

Mr. Justice Roberts delivered the opinion of the Court.

Certiorari was granted to the Court of Claims to review a judgment in favor of the United States in an action to recover an alleged overpayment of excess profits tax for the calendar year 1919. The petitioner, a corporation, kept its books and made its returns of income and excess profits taxes on the accrual basis. In its return for the year ended December 31, 1919, it did not deduct from invested capital any amount on account of income and excess profits taxes for 1918 assessed and paid in 1919.

The Commissioner of Internal Revenue determined that the invested capital for 1919 should be reduced by the amount of income and profits taxes for 1918, as of the dates in 1919 when the instalments of taxes fell due and were paid. To accomplish this he computed an average deduction for the year 1919, and diminished the earned surplus as of January 1, 1919, by subtracting from it the amount so ascertained.

The Commissioner's action was in accordance with Article 845 of Treasury Regulations 45, promulgated April 17, 1919, applicable to the Revenue Act of 1918. The pertinent portion follows:

> "federal income . . . taxes are deemed to have been paid out of the net income of the taxable year for which they are levied."

Section 326 (a) of the Revenue Act of 1918 provided that "as used in this title the term 'invested capital' for any year means . . . :

(1) Actual cash bona fide paid in for stock or shares;
(2) Actual cash value of tangible property, other than cash, bona fide paid in for stock or shares, . . . ;

(3) Paid-in or earned surplus and undivided profits; not including surplus and undivided profits earned during the year;"

Petitioner asserts that Article 845 was based on the erroneous assumption that income taxes are payable out of the net income of the taxable year for which they are levied.

The United States replies that it is, and since 1914 it has been, required that a taxpayer shall keep his books and make his returns on a basis which will reflect true income; that while the taxes for any year are not payable until the following year, good accounting practice requires an accrual of them as a liability of the current year's business; and that the regulation in question was not only reasonable, but necessary for proper administration of the Revenue Act.

The position of the Government is sound. A corporation cannot claim to have accumulated any net income in any year until provision is made for taxes accrued, based on net income for the same year.

The reasonableness of the regulation is further shown by the fact that "invested capital" was merely a legislative definition of an element in the formula prescribed for computation of excess profits tax. Congress might have expressly declared that taxes should be excluded from invested capital. It did not do so in § 326 (a), or elsewhere in the act. The regulations were made pursuant to express authority (see § 1309 of the Revenue Act of 1918). They are valid unless unreasonable or inconsistent with the statute. *United States* v. *Grimaud*, 220 U. S. 506, 517-518; *International Ry. Co.* v. *Davidson*, 257 U. S. 506, 514. They constitute contemporaneous construction by those charged with the administration of the act, are for that reason entitled to respectful consideration, and will not be overruled except for weighty reasons. *United States* v. *Moore*, 95 U. S. 760, 763; *Brewster* v. *Gage*, 280 U. S. 327, 336.

Petitioner insists that Article 845 is unreasonable as applied to 1918 taxes; that no one could know what those taxes would be at the close of the year, because the so-called Revenue Act of 1918 was not passed until February, 1919, and made changes in the rates. But the 1917 act was in force, and required the payment of the same sort of taxes, and petitioner concedes it accrued its taxes for 1918 and set them up in a reserve at the end of the year.

The Act of 1918 was retroactive and replaced the prior act of October 3, 1917, and taxpayers understood that the policy of the United States with respect to income and profits tax was continuous. In February, 1919, the Treasury promulgated Decision 2791, applicable to the 1917 Act, and in substance the same as Article 845, which was issued under the 1918 Act on April 17, 1919. The taxes in question were provided for by an act passed in February, 1919, but they were for the year 1918. The act was passed in ample time to allow the taxpayer to readjust its accounts for that year by including these taxes; and, since its books were kept on an accrual basis, it was necessary that this should be done in order clearly to reflect the income for 1918.

United States v. *Woodward*, 256 U. S. 632, on which petitioner relies, is clearly distinguishable on the grounds stated in *United States* v. *Anderson*, 269 U. S. 422, 441.

We cannot hold that the regulation on which the Commissioner relied was unreasonable or in conflict with the provisions of the statute. The judgment is affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.